APP

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GRAYS HARBOR COUNTY
C. BROWN, CLERK

2014 AUG 18 PM 3:27

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON, Plaintiff, v. JOSE ISIDRO-SOTO, Defendant	No · 04-1-412-1 **ORDER PURSUANT TO CrR7.8(c)(2)**

This matter coming on before me, Judge of the above-entitled court, the court having heard argument and considered the circumstances finds:

1. The defendant's motion is time-barred pursuant to RCW 10.73.090.

2. The defendant has failed to make a substantial showing that he is entitled to relief.

IT IS THEREFORE ORDERED, that the defendant's motion shall be transferred to the Court of Appeals, Division II, for consideration as a Personal Restraint Petition. The clerk shall forward the following documents: Defendant's Motion to Withdraw Plea and Vacate Conviction; Statement of Jose Isidro-Soto; the State's Response to Motion for Order to Withdraw Plea and Vacate Record of Conviction; the State's Memorandum of Authority, Re: Motion to Vacate.

DATED· this 18th day of August, 2014.

JUDGE

PROSECUTING ATTORNEY
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Presented by:

GERALD R FULLER
Interim Prosecuting Attorney
WSBA #5143

Approved (for entry)(as to form)

Attorney for Defendant
WSBA # 41683

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff;

vs.

JOSE ISIDRO-SOTO,

Defendant.

Case No. 04-1-00412-1

MOTION TO WITHDRAW PLEA AND VACATE CONVICTION

I. MOTION

COMES now the Defendant JOSE ISIDRO-SOTO by and through his undersigned attorney, and hereby requests that his pleas of guilty entered in this matter on October 4, 2004 be withdrawn and the judgment and sentenced entered on October 11, 2004 be vacated. This motion is brought pursuant to CrR 4.2 and CrR 7.8.

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II. RELIEF REQUESTED

This request for relief is based on the ineffective assistance of the Defendant's prior counsel in advising the Defendant to enter a plea of guilty, where counsel wrongly assured the Defendant, a noncitizen, that entering a plea of guilty would not have adverse immigration consequences. This advice was a material misrepresentation and was wrong.

An assault offense under RCW 9A.36.021 and 9.41.010 with a special finding of a deadly weapon is categorically a Crime Involving Moral Turpitude (CIMT) and a Crime of Violence (COV). Therefore it is a deportable offense under 8 U.S.C. 1227(a)(2)(A)(I), (II) and (iii) and 8 U.S.C 1227(a)(2)(C).

The one-year statute of limitations for post conviction relief under CrR7.8 is equitably tolled in this matter because the Defendant did not discover the immigration consequences of his plea until he consulted counsel. Therefore this motion is timely.

III. FACTS

The Defendant is not a citizen of the United States. He is a lawful permanent resident of the United States, but a citizen on Mexico. On August 17, 2004 the Defendant, a juvenile, was arrested in the City of Aberdeen and charged with assault in the 2nd degree, unlawful possession of a firearm, and harassment.

The Defendant later met with his attorney Erik M. Kupka. The Defendant and the attorney discussed that the Defendant was not a citizen of the United States. Mr. Kupka advised the Defendant that if he entered a plea of guilty to assault in the second degree with a special finding of a deadly weapon, he would not be deported

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from the United States. Mr. Kupka further advised that if the Defendant took his case to trial and were found guilty, he would be deported from the United States. As a result of Mr. Kupka's advice, the Defendant believed that if he pleaded guilty to the charge, he would not be subject to deportation. The Defendant would not have pleaded guilty if he knew it would make him deportable.

Based upon Mr. Kupka's erroneous advice, the Defendant then entered a plea of guilty to assault in the second degree with a special finding of a deadly weapon, and a judgment and sentence was entered thereon.

The Defendant's initials were added throughout the plea agreement to acknowledge firearms ownership prohibition consequences and "strikes" but are absent from the plea agreement's notice to non-citizens, section (i) on page 3 of 6.

The Defendant then met with attorney Erik Kupka in January 2014 to explore a potential vacation or amendment to his judgment and sentence.

The Defendant then appeared in United States Immigration Court and is ordered to appear for deportation proceedings on September 14, 2014.

IV. ISSUES PRESENTED

Should the Court withdraw the "Statement of Defendant on Plea of Guilty" dated October 4, 2004 and the "Judgment and Sentence" dated October 11, 2004 under CrR 4.2(f) when: (1) the Defendant received ineffective assistance of counsel and was specifically misadvised as to the consequences of entering such a plea when a conviction under RCW9A.36.021 and 9.41.010 with a special finding of a deadly weapon is categorically a Crime Involving Moral Turpitude (CIMT) and a Crime of

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Violence (COV) and therefore clearly makes the Defendant deportable under 8 U.S.C. 1227(a)(2)(A)(i)(I),(II) and (iii) and 8 U.S.C 1227(a)(2)(C); (2) when the Defendant's attorney was required to advise him of said consequences under *State v. Sandoval*, (171 Wn.2d 163, 249 P.3d 1015 (2011)); (3) where the Defendant's attorney affirmatively misrepresented and actively mislead the Defendant on an important criminal matter; (4) where the Defendant has demonstrated prejudice; and (5) when the statute of limitations for vacating the plea and judgment is equitably tolled under the facts of this case?

V. EVIDENCE RELIED ON

1. The Declaration of Jose Isidro-Soto
2. The Pleadings and Files herein

VI. ARGUMENT

In the plea bargaining context, effective assistance of counsel means that counsel actually and substantially assisted his client in deciding whether to plead guilty. *State v. Cameron* 30 Wn.App. 229, 232, 633 P.2d 901, 904 (1981). A defendant bears the burden of showing he did not receive effective assistance from counsel. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). Generally, a defendant meets that burden by showing that his counsel rendered deficient performance and he was prejudiced by the deficiency. *Id.* At 334-35. Under this analysis, the Defendant must demonstrate (1) that he was affirmatively misadvised, and (2) prejudice resulting from said mis-advisement. Specifically, a defendant meets that burden by showing that his counsel affirmatively misadvised him about even a collateral consequence of

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pleading guilty, and that he would not have pled guilty if he had received correct advice. *State v. Stowe*, 71 Wn.App 182, 187-88, 858 P.2d 267 (1993). If prejudice can be proven, the plea will be proven "manifestly unjust" and may be withdrawn under CrR 4.2(f). See, *State v. D.T.M.*, 78 Wn.App 216, 219, 896 P2d 108 (1995).

The Defendant's plea should be withdrawn for the reasons set forth below.

A. Under Padilla v. Kentucky, Chaidez v. U.S. and State v. Sandoval, Criminal Defense Attorneys Must Advise Their Non-Citizen Clients of the Adverse Immigration Consequences of A Guilty Plea.

Both the Supreme Court of the United States and the Supreme Court of Washington State have held that criminal defense attorneys have a duty to inform their non-citizen clients of the immigration consequences of a guilty plea. In Padilla v. Kentucky, 130 S.Ct. 1473 (2010), the petitioner was a lawful permanent resident immigrant who faced deportation after pleading guilty in a Kentucky court to the transportation of a large amount of marijuana in his tractor-trailer. In a post-conviction proceeding, Mr. Padilla claimed that his counsel not only failed to advise him of this consequence prior to his entering the plea, but also told him that he "did not have to worry about immigration status since he had been in the country so long." Mr. Padilla stated that he relied on his counsel's erroneous advice when he pleaded guilty to the drug charges that made his deportation virtually mandatory.

The Supreme Court held that, in light of the unique severity of deportation and the reality that immigration consequences of criminal convictions are inextricably linked to the criminal proceedings, the Sixth Amendment requires defense counsel to advise a non citizen defendant regarding the immigration consequences of a guilty

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plea, and absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel. Padilla describes the precise advice required.

> Immigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. **When the law is not succinct and straightforward (as it is in many of the scenarios posited by Justice Alito), a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.** *Id. At 1483 (Emphasis added.)*

However, the Supreme Court held in *Chaidez v. U.S.*, 11-820 slip op. (February 20, 2013) that *Padilla* is a "new rule" that does not apply retroactively to a case involving a federal conviction that was final before *Padilla* (March 31, 2010).

Here, the Defendant's case was final in 2004, admittedly, *Chaidez* holds that *Padilla* requirement to advise regarding immigration consequences of a guilty plea does not apply to the case at bar.

However, *Chaidez* is arguably limited only to advising a noncitizen regarding the immigration consequences of a guilty plea.

An affirmative material misrepresentation by counsel regarding the immigration consequences of a guilty plea still violates the Sixth Amendment regardless of whether Padilla applies to the case at bar. "A lawyer may not affirmatively misrepresent his expertise or otherwise actively mislead his client on any

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important matter, however related to a criminal prosecution." *Chaidez v. U.S.*, 11-820 slip op. at 13.

In *State v. Sandoval* 171 Wn.2d 163 (2011) the Court found that Mr. Sandoval was denied effective assistance of counsel when his attorney urged him to take a plea offer that resulted in his guilty plea to third degree rape and subsequent deportation proceedings. The Court reasoned that the deportation consequences for a third degree rape plea was a straightforward consequence under the law, and that counsel's advice that Mr. Sandoval would not be deported immediately was insufficient to advise him that deportations was in fact a certain consequence of the plea, making it instead appear a "remote possibility." The Court further found that the warnings provided in the plea form pursuant to RCW 10.40.200 do not excuse defense attorney from providing the requisite warnings to clients regarding immigration consequences.

B. A Conviction Under RCW RCW 9A.36.021 and 9.41.010 (Assault II) with a Special Finding of a Deadly Weapon is Clearly a Removable Offense Under 8 U.S.C. 1227(a)(2)(A)(i)(I), (II) and (iii) and 8 U.S.C. 1227(a)(2)(C).

The immigration consequences of a conviction under RCW 9A.36.021 and 9.41.010 with a special finding of a deadly weapon are straightforward. 8 U.S.C. 1227 - Deportable Aliens:

> (a) Classes of Deportable Aliens. Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the aliend is within one or more of the following classes of deportable aliens:
> (2) Criminal Offenses.
> (A) General Crimes
> (i) Crimes of moral turpitude. Any Alien who-

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(I) is convicted of a crime involving moral turpitude within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j) after the date of admission and
(II) is convicted of a crime for which a sentence of one year or longer may be imposed,
is deportable.
(iii) Aggravated felony Any alien who is convicted of an aggravated felony at any time after admission is deportable.
(2) Criminal offenses
(C) Certain firearm offenses - Any alien who at any time after admission is convicted under any law of...possess..use...carry ...is deportable.

To be deportable under this statute requires three (3) things. First, the conviction must occur within five years of the date the person was admitted as a lawful permanent resident. Mr. Isidro-Soto was admitted as a resident on July 1, 2004, and thus this prong is met.

Second, the conviction must be for a Crime Involving Moral Turpitude (CIMT) or Aggravated Felony, commonly referred to as a Crime of Violence (COV).

The Board of Immigration Appeals has defined CIMT as: "Conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general." Matter of Short, 20 I. & N. Dec 136, 139 (BIA 1989).

In *State v. Byrd*, 125 Wn.2d 707 (1995), the Washington Supreme Court held that specific intent either to create apprehension of bodily harm is an essential element of assault in the second degree. This additional element to Washington's common law assault definition renders a conviction under Assault II a categorical CIMT offense. It is also sufficient to classify the conviction as a COV under 18 USC

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16(b). See *United States v. Jennen*, 596 F.3d 594, 600 (9th Cir. 2010). The second prong is met.

Finally, it must be a conviction for which a sentence of one year or longer may be imposed. This prong is clearly satisfied as a conviction for Assault II is a Class B felony for which a ten (10) year term of imprisonment may be imposed.

Thus a conviction under this statute is a clearly deportable offense for which Mr. Kupka should have advised the Defendant. Even if the issue was unclear, Mr. Kupka's affirmative mis-advice still violates the Sixth Amendment and is the same kind of erroneous advice that occurred in *Sandoval*. Finally, as the Sandoval Court noted: any warnings provided in a plea form do not cure a defense attorney's wrong advice regarding immigration consequences.

C. Defendant's Plea was Defective Because He Received Ineffective Assistance of Counsel.

The Defendant's conviction makes him deportable. Mr. Kupka's duty as a lawyer under *Sandoval* was to refer to the immigration statute and advise the Defendant that by pleading guilty, he would be deportable from the United States. If he was unsure of the consequences, he was required to seek assistance from other counsel.

Mr. Kupka affirmatively misrepresented to the Defendant on a very material matter that he would not be deported if he entered a plea of guilty and would be deported if he went to trial and was convicted by a jury. The Defendant specifically entered a plea of guilty based on the erroneous and ineffective advice of counsel, and would not have entered a plea of guilty had he been properly advised. As such,

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Defendant's counsel provided ineffective assistance of counsel. Thus, the first prong of *McFarland* has been established.

The Defendant has also established the requisite prejudice. The Defendant specifically relied on this advice in consenting to the Plea. The Defendant will be deported based upon this conviction. Thus his prejudice is strong and the second prong of *McFarland* has been established. Under these circumstances, the Plea is manifestly unjust and should be withdrawn and the judgment vacated.

D. **The Defendant's Motion is Timely Made Under Applicable Authority.**

A motion to withdraw a guilty plea under CrR4.2(f) is subject to CrR 7.8(b), (relief from judgment or order). As a collateral attack this is subject to the one-year statute of limitations specified in RCW 10.73.090-100. However under *State v. Littlefair*, 112 Wn.App. 749, 51 P.3d 116 (2002), the one year statute of limitations is equitably tolled in this matter.

The issue posed in *State v. Littlefair* was "whether a motion to withdraw a guilty plea under RCW 10.40.200 was time-barred by RCW 10.73.090. The Court held that 10.73.090 works as a "statute of limitation and not as a jurisdictional bar," and thus is subject to equitable tolling. *State v. Littlefair*, 112 Wn.App. 749, 757 51 P.3d 116 (2002). As such, Littlefair was allowed to toll the one-year time limit for post-conviction relief because he was not advised or aware of the possibility of deportation, through no fault of his own, and because the INS "inexplicably" delayed starting deportation proceedings until the time limit had passed. The court ruled that the one-year limit of RCW 10.73.090 was tolled to the date on which he first discovered the

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immigration consequences of his plea. *Littlefair* at 762: *See also, In re Personal Restraint Petition of Hoisington*, 993 P.2d 296 (2000).

Similar to *Littlefair*, the Defendant was misinformed as to the immigration consequences of his plea and conviction and was not aware of the immigration consequences of his plea until just recently advised by his former counsel in January 2014.

Therefore equitable tolling of the statute applies and this motion is timely made.

Finally, RCW 10.73.100(6) states:

> The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:
> (6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

Recent immigration laws have changed and these changes are material to the conviction and thus the one-year statute of limitation is arguably not applicable.

E. **The Remedy is to Withdraw the Plea and Vacate the Judgment.**

The remedy for a defective plea under CrR 7.8 is simple; the Defendant is allowed to make a motion to withdraw the plea and the defendant is allowed to enter a plea of not guilty. For these reasons, the Defendant is entitled to withdraw his plea and vacation of the judgment entered thereon and re-enter his plea of not guilty.

VII. CONCLUSION

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For the foregoing reasons, the Court should allow the Defendant to withdraw his Plea of Guilty and vacate the Judgment and Sentence entered thereon.

RESPECTFULLY SUBMITTED, Dated this 4th Day of August, 2014

MAKUS LAW PS

By: _____

Eric John Makus, WSBA No. 41683
Attorney for the Defendant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff;

vs.

JOSE ISIDRO-SOTO,

Defendant.

Case No. 04-1-00412-1

STATEMENT OF JOSE ISIDRO-SOTO IN SUPPORT OF MOTION TO WITHDRAW PLEA AND VACATE CONVICTION

1. I, JOSE ISIDRO-SOTO, make the following statement in support of my Motion to Withdraw Plea and Vacate Conviction.

2. I make this motion based on the ineffective assistance of counsel I received from my criminal attorney, Erik M. Kupka. Mr. Kupka misadvised me regarding the immigration consequences from a conviction for Assault in the Second Degree (Assault II), in violation of RCW 9A.36.021, 9.41.010 and 9.94A.510(3).

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3. I was born on February 24, 1987 and am a citizen of Mexico. I entered the United States at age three (3), in 1990 and became a lawful permanent resident, at age seventeen (17) on July 1, 2004.

4. On August 17, 2004, I was arrested in Aberdeen, Washington on suspicion of assault, unlawful possession of a firearm, and harassment. Although I was a juvenile, I was later charged with a crime under the above referenced case number in Grays Harbor County Superior Court because of an allegation of being a juvenile armed with a firearm.

5. The Court appointed me legal counsel; my lawyer was attorney Erik M. Kupka.

6. Mr. Kupka and I discussed me entering a plea of guilty to a charge of Assault II with a special finding of a deadly weapon pursuant to RCW9.94A.125. We specifically discussed my immigration status and that I was not a citizen of the United States. I asked Mr. Kupka how a criminal conviction would affect my immigration status. Mr. Kupka told me that if I entered a plea of guilty, I would not be deported. Mr. Kupka further told me that if I entered a plea of not guilty, and was later found guilty by a jury at trial, that I would be deported.

7. On October 4, 2004, I agreed to enter a plea of guilty to Assault II with a special finding of a deadly weapon based on Mr. Kupka's advice that I would not be deported. Mr. Kupka never told me that I could be deported if I entered a plea of guilty. In fact, he told me I would not be deported if I entered a plea of guilty. Had I been advised that by entering a plea of guilty, I could be deported, I would not have agreed to plead guilty.

8. On October 11, 2004, I was sentenced and ordered to confinement for sixteen (16) months with credit for time served.

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9. On July 15, 2005 I was released from confinement. In total, I spent eleven (11) months in confinement.

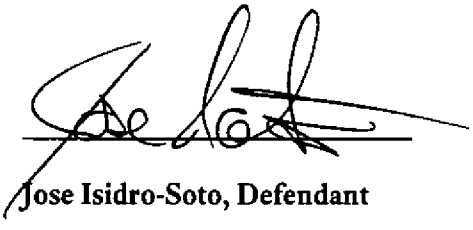
10. On January 2, 2014 I met with attorney Erik M. Kupka to explore a potential vacation or amendment to my judgment and sentence.

11. I now wish to withdraw my plea of guilty based on the ineffective assistance of my former counsel, Erik M. Kupka.

12. On January 29, 2014 I appeared in United States Immigration Court and because of my 2004 Grays Harbor County Superior Court conviction for Assault II, the Judge ordered me to appear for deportation proceedings on September 14, 2014.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my belief.

SIGNED this 4th day of August, 2014 at Hoquiam, Washington.

BY: 

Jose Isidro-Soto, Defendant

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON, Plaintiff, v. JOSE ISIDRO-SOTO, Defendant.	No.: 04-1-412-1 **RESPONSE TO MOTION FOR ORDER TO WITHDRAW PLEA AND VACATE RECORD OF CONVICTION**

COMES NOW, Gerald R. Fuller, Interim Grays Harbor County Prosecuting Attorney, and responds as follows:

1. The defendant was originally charged on August 19, 2004, with Assault in the Second Degree, Unlawful Possession of a Firearm in the Second Degree and Felony Harassment. The defendant ultimately appeared and pled guilty to Assault in the Second Degree on October 4, 2004.

2. This motion, on its face, is time-barred by RCW 10.73.090.

Pursuant to CrR7.8(c)(2) this court should transfer this matter to the Court of Appeals to be heard as a Personal Restraint Petition.

Dated this _____ day of August, 2014.

GERALD R. FULLER
Interim Prosecuting Attorney
for Grays Harbor County

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON, Plaintiff, v. JOSE ISIDRO-SOTO, Defendant.	No.: 04-1-412-1 **MEMORANDUM OF AUTHORITIES RE: MOTION TO VACATE**

ISSUE

Should the court apply the doctrine of equitable tolling to avoid finding that this motion is time-barred?

Answer: No.

CrR7.8(c)(2) requires this court to transfer this matter to the Court of Appeals unless the petition is not time-barred by the one year limitation of 10.73.090. The defendant seeks to avoid the time-bar by invoking equitable tolling.

While the Supreme Court in the State of Washington does recognize "equitable tolling," it has never been applied to a circumstance such as this. The doctrine has been held applicable in two separate circumstances. It applies when there has been "bad faith, deception, or false assurances by the State and the exercise of diligence by the defendant." In Re Bonds, 165 Wn.2d 135, 141, 196 P.3d 672 (2008). It may also apply when a defendant can establish "actual innocence." In Re Carter,

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172 Wn.2d 917, 932, 263 P.3d 1241 (2011). This last circumstance requires factual innocence, not merely legal error in the procedures that led to the conviction. In the case at hand, there is no showing of either bad faith by the State or actual innocence of the defendant. See Benjamin v. Bellevue, 144 Wn.App. 755, 183 P.3d 1127 (2008). (Equitable tolling of one year time-bar not applied to 1997 guilty plea in which defendant was not informed of immigration consequences.)

State v. Littlefair, 112 Wn.App. 749, 51 P.3d 116 (2002), rev. den., 149 Wn.2d 1020 (2003) does not apply to the circumstance at hand. Littlefair involved much more than mis-advice by counsel concerning potential immigration consequences. In Littlefair, the defense attorney crossed out the paragraph of the Plea Agreement that warned the defendant of possible immigration consequences. Under this "unique and bizarre series of events," the Court of Appeals did find equitable tolling. On the other hand, a defendant's ignorance of his legal rights does not, by itself, justify equitable tolling. In Re Hoisington, 99 Wn.App 423, 993 P.2d 296 (2000).

Interestingly enough, the defendant is alleging that he was affirmatively misinformed by counsel, Eric Kupka. Conspicuously absent is any declaration from Mr. Kupka supporting this claim.

Even under the doctrine of Littlefair, the equitable tolling ends on "the day on which the defendant first discovered that deportation was a consequence of his plea." Littlefair, 112 Wn.App. 763. Nothing in the pleadings filed has demonstrated when the defendant had actual notice that his plea of guilty would affect his immigration status.

This court should find defendant's motion to be time-barred and order transfer to the Court of Appeals under CrR7.8(c)(2).

Has the defendant made a substantial showing that he is entitled to relief?

Answer: No.

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The State is not prepared to accept the defendant's unsubstantiated claim that counsel misinformed him. The State is not prepared to accept as true that any experienced attorney would tell his client that an assault conviction would not affect his immigration status. There was no requirement in 2004 that the defendant be advised of the effect of a plea on his immigration status. Prior to Padilla v. Kentucky, infra, the effect on the defendant's immigration status was considered collateral. State v. Jamison, 105 Wn.App 572, 595, 20 P.3d 1010 (2001).

In Padilla v. Kentucky, 559 U.S. 356, 130 Sup. Ct., 1473, 176 L.Ed.2, 284 (2010), the United States Supreme Court held that the Sixth Amendment required an attorney for a criminal defendant to provide advice about the risk of deportation arising from the guilty plea. The United States Supreme Court has since held, however, that Padilla does not apply retroactively. Chaidez v. U.S., 133 Sup. Ct. 1103, 185 L.Ed.2d 149 (2013). The standard of practice in 2004 did not require an attorney to provide such advice. See U.S. v. Amador-Leal, 276, F.3d 511, 513-517, (9th Cir 2002). The defendant has made no showing that counsel's representation was ineffective based on the standard in place at the time.

Dated this ____ day of August, 2014.

GERALD R. FULLER
Interim Prosecuting Attorney
for Grays Harbor County

BY: Gerald R Fuller
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GRAYS HARBOR COUNTY SUPERIOR COURT

September 04, 2014 - 8:22 AM

Transmittal Letter

Document Uploaded: prp-NOA-2.pdf

Case Name: State of Washington v Jose Isidro-Soto
County Cause Number: 04-1-00412-1
Court of Appeals Case Number:

✔ Personal Restraint Petition (PRP) Transfer Order

Notice of Appeal/Notice of Discretionary Review

(Check All Included Documents)

✔ Judgment & Sentence/Order/Judgment
Signing Judge: David L. Edwards

Motion To Seek Review at Public Expense

Order of Indigency

Filing Fee Paid - Invoice No: ___

Affidavit of Service

Clerk's Papers - Confidential Sealed

Supplemental Clerk's Papers

Exhibits - Confidential Sealed

Verbatim Report of Proceedings - No. of Volumes: ___
Hearing Date(s): _____

Administrative Record - Pages: ___ Volumes: ___

Other: _____

Co-Defendant Information:

No Co-Defendant information was entered.

Comments:

No Comments were entered.

Sender Name: Sherri L Hines